

EXECUTIVE OFFICE,
STATE OF TEXAS.*To the Legislature:*

I return, without approval, House bill No. 242, authorizing owners of land to drain the same in the general course of natural drainage, and exempting them from liability for any damage occasioned to others by such drainage. The unconstitutionality of such exemption, which seems to be the sole purpose of the measure, can hardly be questioned. Attention is invited to the accompanying opinion of the Attorney General upon the subject.

JOSEPH D. SAYERS,
Governor.

Austin, April 4, 1901.

To the Honorable Joseph D. Sayers, Governor of Texas.

SIR: With reference to House bill No. 242, An Act "authorizing the owners of land to drain the same in the general course of natural drainage, and exempting them from liability for any damage caused by such drainage," I have the honor to report:

The bill provides that the owners of land may drain the same in the general course of natural drainage by enlarging, straightening and cleaning out that part of any natural water course, creek, drain or bayou on said land or running through the same, or by constructing drains on said land, discharging the same into any natural water course, creek, drain, bayou or bay, whereby the water will be carried into some natural water course, creek, drain, bayou or bay, and that such owners shall not be liable in damages therefor to any person or persons or corporations.

So far as the bill authorizes the drainage of lands by the owner thereof, the same is unnecessary, since such owner has that right without the aid of legislation, but under existing laws he must not do so in such manner as to materially injure the lands of his neighbor. He cannot concentrate and discharge the water on his lands upon the lands of another without being liable for his act.

It is not unreasonable to suppose that one might, by constructing drains on his lands, discharging the same into a natural water course, so increase the volume of water which would flow into it as to cause it to overflow upon and injure the property of another.

For this the law gives the injured party a cause of action of which the proposed bill, if it becomes a law and is valid, would deprive him.

This would manifestly be most unjust, for no person has a right to use his property to the injury of another; but the Constitution of the United States, as well as of the State of Texas, expressly provides that a citizen shall not be deprived of his life, liberty or property without due process of law.

The constitutional restriction which has just been quoted, has been construed by the Supreme Court of the United States, and by the higher courts of the various States, so often, that its meaning is no longer a subject of discussion. Every person has a vested interest in the right of action which the law gives him for the recovery of damages for injuries to his property. This could not be taken away from him if it were not guaranteed by the Constitution, but so jealous have the framers of the organic laws of the United States and of our State been for the preservation of the rights of the citizen, that prohibitions against depriving a citizen of his property without just compensation, are found, not only in the Constitution of the United States, but in every Constitution adopted by the people of this State.

There can, therefore, be no question but that so much of the proposed measure as provides that the owner of the land shall not be liable in damages for an injury to another which may result from his act is in conflict with natural right, and would be violative of the restraints imposed upon legislative action by the Constitution of the United States and of the State of Texas, and would be void.

Very respectfully,
(Signed) C. K. BELL,
Attorney General.